IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2610 of 1993
With
SPECIAL CIVIL APPLICATION NO. 2912 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ISHAWARBHAI VANMALIBHAI PATEL

Versus

STATE OFGUJARAT

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Appearance:

1. Special Civil Application No. 2610 of 1993
MR BS PATEL for the Petitioner.
Mr. Mukesh Patel, ASSTT. GOVERNMENT PLEADER
for the Respondents.

2. Special Civil Application no. 2912 of 1993
Mr. Y.N.Oza for the petitioner.
Mr. Mukesh Patel, ASSTT. Government Pleader
for the respondent.

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CORAM : HON'BLE MR.JUSTICE KUNDAN SINGH

Date of decision: 06/11/2003

COMMON ORAL JUDGEMENT

As the question involved in both these petitions is one and the same, hence they are being disposed of by this common judgment. Both these petitions have been filed for quashing the circular dated 28th September, 1976 and the notice cum order dated 12th March, 1993. The Commissioner of Food and Drugs Control Administration required from Employment Exchange the names of persons having requisite qualifications for the posts of Food Inspector. The names of both the petitioners were sent to the respondent no. 2. The office of the respondent no.2 after going through the papers including the degree and other certificates directed the petitioners to appear before authorities concerned for interviews. After interviews, both the petitioners were selected and they were given appointment letters. The petitioners were given three months' training. Thereafter, they were posted and worked at different places as Food Inspectors. Thereafter they were confirmed in the cadre of Food Inspector by the department concerned and they were also issued letters in that respect. On the basis of some Government resolution dated 28.9.1976, letters of discharge were issued to the petitioners stating on the ground that they did not possess requisite qualifications as per Rules. On the basis of the Government Resolution dated 28th September, 1996, the orders of discharge were issued to the petitioners and those orders have been challenged in these petitions.

2. It is stated that the requisite qualification for the aforesaid post of Food Inspector is a graduate in agriculture, but as per Government Resolution dated 28th September, 1976, in consultation with the Gujarat Public Service Commission that degree of Lokshikshan and Bachelor of Agriculture bestowed by Mangal Bharti Vidyapith, Bahadurpura, Dist: Vadodara is equivalent to B.A. It is mentioned in the letter dated 12.3.1993 that the petitioners are Bachelor of Agriculture passed from Mangal Bharti Vidyapith, Bahadurpura. As per the resolution dated 28th September 1976 of General Administration Department, it was resolved that the Government of Gujarat in consultation with Gujarat Public Service Commission that the degree of Lok Shikshan and Bachelor of Agriculture by Mangal Bharti Vidyapith, Bahadurpura, Dist: Baroda is treated as equivalent to degree of B.A. granted by other

university. As per Recruitment Rules of Food Inspector, a person having passed B.A.Degree shall not be appointed. The degree of Bachelor of Agriculture granted to the petitioner which is equivalent to B.A. They are not having requisite educational qualification. Therefore, one month's notice for discharging the petitioner from the service was given and they were discharged from service of Food Inspector.

3. The Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as "the Rules") have been framed for the purpose of including the qualification for Inspectors. Rule 8 of the said Rules provides a qualification for Food Inspectors. Rule 8 reads as under:

"8. Qualification for Food Inspector:

A person shall not be qualified for appointment as Food Inspector unless he :

(a) is a medical officer in charge of health administration of a local area or

(b) he is a graduate in medicine and has received at least one month training in Food Inspection and sampling work approved for the purpose by the Central Government or a State Government; or

(c) he is a graduate in Science with Chemistry as one of the subjects or he is a graduate in agriculture, public health or pharmacy or in veterinary science or a graduate in Food Technology, or dairy technology or he is a diploma holder in Food Technology or Dairy Technology from a University or institution established in India by law or has equivalent qualification recognised and notified by the Central Government for the purpose and has received three months satisfactory training in food inspection and sampling work under a Food (Health) Authority or in an institution approved for the purpose by the Central Government;

Provided that the training in food inspection and sampling work obtained prior to the commencement of Rule 3 of Prevention of Food Adulteration (Fourth Amendment) Rules 1976, in any of the laboratories under the control of :

(i) a public analyst appointed under the Act or

(ii) a fellow of the royal institute of Chemistry of Great Britain (Branch E); or

( (iii) Any Director, Central Food Laboratory, or
(iv) the training obtained under the Food, Health authority prior to the commencement of the Prevention of Food Adulteration (Amendment) Rules 1980, shall be considered to be equivalent for the purpose of the requisite training under the rules;

Provided further that a person who is a qualified Sanitary Inspector having experience as such for a minimum period of one year and has received at least 3 months training in whole or in parts in food inspection and sampling work may be eligible for appointment as Food Inspector, upto the period ending on 31st March 1985 and may continue as such if so appointed eventhough he does not fulfil the qualifications laid down in clauses (1) to (c).

Provided also that nothing in this rule shall be construed to disqualify any person who is a Food Inspector on the commencement of the Prevention of Food Adulteration (Amendment) Rules 1980, from continuing as such after such commencement.)"

4. The learned Assistant Government Pleader pointed out that Government of Gujarat has also framed Rules and those rules are called Food Inspectors (Food and Drugs Control Administration) Recruitment Rules 1982. The eligibility for the appointment has been provided under Rule no. 3 of the said Rules which reads as under:

"3. To be eligible for appointment by direct selection to the post mentioned in rules above, a candidate shall,
(a) not be more than 28 years of age.
(b) be graduate in Science with Chemistry as one of the subjects or a graduate in Agriculture or Public Health, Pharmacy or in Veterinary Science or a graduate in Food Technology or Dairy Technology or is a Diploma holder in Food Technology or is a Diploma holder in Food Technology or Dairy Technology from a University or Institute established in India by law or equivalent qualifications recognised by Government of India for the purpose;
(c) be a Medical Officer in charge of Health Administration of a Local Area, or
(d) be a person who is qualified as Food Inspector under section 9 of the Prevention of Food Adulteration Act, 1954, and Rules made

thereunder:

Provided that the age limit may be relaxed in favour of a candidate possessing exceptionally good qualification and experience or both."

Now, the question before this Court is whether the qualification of graduation in Agriculture is a requisite qualification for the petitioners for the post of Food Inspector as provided under Rule 3 of the Recruitment Rules framed by the State of Gujarat or under Rule 8 of the Rules of 1955 ? And whether the petitioners possess that requisite qualification ?

5. The contention of the learned Assistant Government Pleader is that the Rules require qualification for the Food Inspector, namely : a graduate in Science with Chemistry as one of the subjects or a graduate in Agriculture or Public Health or Pharmacy or in Veterinary Science or a graduate in Food Technology or Dairy Technology etc. As such, candidate for the post of Food Inspector must be a graduate in Science with Agriculture as one subject as Science with Chemistry as one of the subjects. The learned counsel for the petitioners have emphasised on the words " or a graduate in Agriculture" and the petitioners are having such degree from the recognised institution. It is not disputed that the institution which has given the degree to the petitioners is a recognised institution. While, on the other hand, the learned Assistant Government Pleader submitted that Science stream is required for the purpose of Food Inspector, i.e. he should be a graduate in Science with Chemistry as one of the subjects and/or a graduate in Agriculture and that graduation in Agriculture must have been passed in Science stream. In that respect, the respondent no. 2 Commissioner required clarification from the Institution. The Institution has made it clear by its letter dated 24th December, 1992 that graduation in Agriculture by the Institution is equivalent to B.A. The learned counsel for the petitioners pointed out that the clarification has been made on the basis of the Government Resolution dated 28th September, 1976. It is not an independent opinion of the Institution, but the Government vide its Resolution has settled that graduation in Agriculture by the Institution aforesaid is equivalent to Bachelor of Arts.

6. Affidavit-in-reply has been filed by the respondents in Special Civil Application no. 2912 of 1993. In para-6 of the affidavit, it is stated that the petitioner is a Bachelor of Arts and he is not having

requisite qualification for being appointed to the post of Food Inspector. As per the provisions of Rule 8-C of the above Rules, a person who is a graduate in Science with Chemistry as one of the subjects or who is a graduate in Agriculture or in Public Health or Pharmacy from a University or Institution established in India by law or who is having equivalent qualifications recognised and qualification by the Central Government for the purpose can be appointed as Food Inspector subject to fulfillment of other conditions. In para-7, it is stated that as per the Government Resolution issued by GAD dated 28th September, 1976, a graduate in Agriculture from Mangal Bharti Vidyapith, Bahadurpura, Dist: Vadodara is treated equivalent to Arts of any recognised University. The degree obtained by the petitioner cannot be treated as graduation in Agriculture.

7. I have considered the contentions raised by the learned counsel for the parties. So far as the interpretation of Rule 8 of the Rules and Rule 3(B) of Food Inspector (Food and Drugs Control Administration) Recruitment Rules, 1982 is concerned both Rules provide that a person must be a graduate in Science with Chemistry as one of the subjects or a graduate in Agriculture or Public Health or Pharmacy or in Veterinary Science. The contention of the learned Assistant Government Pleader that science stream is required for the graduate in Agriculture has no substance in view of the fact that graduation in Science with Chemistry as one of the subjects is mentioned. Thereafter, graduation in Agriculture is mentioned. The learned Assistant Government Pleader could not point out that what is the subject of Science stream for a graduate in Agriculture. He could not distinguish the subjects of Agriculture of Science stream or Arts stream. Had it been the Science stream, the requisite qualification for a graduate in Agriculture the words must have been "graduate in science with Chemistry or Agriculture". But the construction of the words clearly shows that graduation in Agriculture is separate from a graduate in Science with Chemistry as one of the subjects. As such, as per Rules, it does not appear to be correct that graduation in Agriculture must be in Science stream. From the words used in Rule 3(B), it is clearly evident thatfor qualification of graduation in Science with Chemistry as one of the subjects with separate clause and graduation in Agriculture which is another separate independent clause, not connected with graduation in Science.

8. So far as the Government Resolution dated 28th September, 1976 is concerned, this circular provides

only that the Government of Gujarat in consultation with Gujarat Public Service Commission resolved that degree of Lokshikshan and Bachelor of Agriculture granted by Mangal Bharti Vidyapith, Bahadurpura is equivalent to B.A. of Science University. This resolution does not disqualify any candidate for the post of Food Inspector having requisite qualification as graduation in Agriculture.

9. As the Rules have been framed by the Central Government as well as by the State Government and some requisite qualification has been provided by both the Rules, the State Government has not amended these Rules for excluding the graduation in Agriculture passed in Arts stream. Hence, even if it is assumed that the degree in Agriculture from the Institution aforesaid is equivalent to Bachelor of Arts that is not excluded by the Rules provided as stated above. As such, the Resolution does not affect requisite qualifications mentioned in Rule 8 of the Rules. and Rule 3(B) of Food Inspector (Food and Drugs Control Administration) Recruitment Rules, 1982. Therefore, the impugned orders of dischage and termination dated 12th March, 1993 and 19th March, 1993 have been erroneously passed by the respondent no. 2 presuming that graduation in Agriculture is required to be in Science stream. Even if the circular dated 28th September, 1976 is maintained, the services of the petitioners deserve to be continued and they cannot be discharged from service by the impugned orders as degree given to both the petitioners is in consonance with the Rules for recruitment of Food Inspectors as there is no allegation against the petitioners that their services were not satisfactory.

10. The learned counsel for the petitioners also submitted that the impugned orders of discharging the petitioners from service have been passed without giving an opportunity of hearing and in violation of principles of natural justice. While, on the other hand, the learned Assistant Government Pleader submitted that one month's notice was given for discharging the petitioners from service. In my view, the notice is for discharge and not a show cause notice. Therefore, the petitioners are required to have an opportunity of hearing and to explain that their graduate degree in Agriculture is a requisite qualification and that opportunity has not been given to the petitioners.

11. This Court has granted status quo after hearing both the parties and that order of status quo is still in operation. As such, the petitioners are still working as Food Inspectors. Therefore, it seems that the

issue regarding requisite qualification was considered by this Court at the time of admission of the petition and thereafter also at the time when the interim relief came to be confirmed. In view of the facts and circumstances stated above, I am of the view that the impugned orders passed by the respondent no.2 discharging the petitioners from service deserve to be quashed and set aside.

12. In the result, these petitions are allowed. The impugned orders dated 12th March, 1993 in Special Civil Application no. 2912 of 1993 and the impugned order dated 19th March, in Special Civil Application no. 2610 of 1993 are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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